

Case 9:19-cv-00004-MAC-CLS Document 41 Filed 03/16/23 Page 1 of 2 PageID #: 163

EASTERN DISTRICT OF TEXAS

MICHEAL JERRIAL IBENYENWA,

Plaintiff,

versus

JERRY L. WILSON, *et al.*,

Defendants.

CIVIL ACTION NO. 9:19-CV-4

MEMORANDUM OPINION AND ORDER

Plaintiff Micheal Jerrial Ibenyenwa, an inmate confined at the Polunsky Unit, proceeding *pro se*, brought this lawsuit pursuant to 42 U.S.C. § 1983 against Jerry L. Wilson and Randy L. O’Neal.

Discussion

On February 23, 2022, the court granted the defendants' motion to dismiss based on plaintiff's failure to exhaust administrative remedies. Accordingly, the court entered a final judgment dismissing the action without prejudice. Plaintiff has filed a motion for reconsideration (#38) and a motion for ruling (#40). This memorandum considers such motions.

Analysis

FED. R. CIV. P. 59 provides in pertinent part the following:

(a)(1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues - and to any party - as follows:

- (A) after a jury trial, for any of reason for which a new trial has heretofore been granted in an action at law in federal court; or
- (B) after a non jury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial.* After a nonjury trial the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(e) **Motion to Alter or Amend Judgment.** A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Since plaintiff's motion for reconsideration was filed within 28 days from the date of the judgment the motion will be considered under Rule 59. Contrary to plaintiff's current assertions, plaintiff was afforded *de novo* review as set forth in the court's memorandum order overruling his objections and adopting the report of the magistrate judge. After careful consideration of plaintiff's motion for reconsideration, the court is of the opinion that plaintiff's motion fails to set forth a meritorious ground warranting relief from the judgment. Accordingly, plaintiff's motion should be denied, and plaintiff's motion for ruling should be denied as moot.

ORDER

For the reasons set forth above, plaintiff's motion to alter or amend judgment and motion for ruling should be denied. It is therefore

ORDERED that plaintiff's motion to alter or amend judgment (#38) is **DENIED**.
It is further

ORDERED that plaintiff's motion for ruling (#40) is **DENIED** as moot.

SIGNED at Beaumont, Texas, this 16th day of March, 2023.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE